

ORDINANCE NO. 6-17**AN ORDINANCE REPEALING SECTION 13-253 AND ADDING SECTION 13-255 TO THE FORT SMITH CODE OF ORDINANCES TO REGULATE PANHANDLING**

WHEREAS, This Ordinance is adopted in order to protect persons from threatening, intimidating or harassing behavior, to keep public places safe and attractive for use by all members of the community and to maintain and preserve public places where all of the community can interact in a peaceful manner. This Ordinance is also intended to provide for the free flow of pedestrian and vehicular traffic on streets and sidewalks in the City, to promote tourism and business and preserve the quality of urban life. The Board of Directors finds that aggressive acts associated with solicitation tend to interfere with the free flow of pedestrian and vehicular traffic and intimidate persons in public places, and can lead to disruption and disorder in public places. Aggressive acts can also cause persons to avoid public places and lead to declining patronage of commercial establishments and tourism. The Board of Directors further finds that solicitation in certain public places is inconsistent with the use of those places, is inherently intimidating, targets persons who are captive audiences or constitutes an invasion of privacy as persons are not able to simply move on if they do not wish to speak to the person soliciting. Solicitation in proximity to bank entrances or check-cashing businesses or automated teller machines is inherently intimidating and should be restricted. By this Ordinance, the Board of Directors do not intend to limit any persons from exercising their constitutional right to solicit funds, picket, protest or engage in other constitutionally protected activity; rather, the intent is to protect citizens and visitors to the City from the fear and apprehension accompanying certain kinds of aggressive solicitation that have become an unwelcome presence in the City.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

SECTION 1: Definitions. "Panhandling," for the purpose of this Article, is any solicitation made in person requesting an immediate donation of money. Solicitation shall include, without limitation, the spoken, written, or printed word or such other acts or bodily gestures as are conducted in furtherance of the purposes of immediately obtaining money or other things of value. Purchase of an item for an amount far exceeding its value, under circumstances where a reasonable person would understand that the purchase is in substance a donation, is a donation for the purpose of this Article. Panhandling does not include passively standing or sitting with a sign or other indication that one is seeking donations, without addressing any solicitation to any specific person other than in response to an inquiry by that person.

SECTION 2: Time of Panhandling. It shall be unlawful for any person to panhandle after sunset or before sunrise.

SECTION 3: Place of Panhandling. It shall be unlawful for any person to panhandle when the person solicited is in any of the following places:

- a) At any bus stop;
- b) In any public transportation vehicle or facility;
- c) In any vehicle on the street;
- d) On private property, unless the panhandler has permission from the owner or occupant;
- e) In proximity to a bank entrance or check-cashing business or automated teller; or
- f) Within one hundred fifty feet (150') of any street corner, street intersection, or highway interchange. For the purposes of this subsection, distance shall be measured from any extension of the solicitor's body, including without limitation any sign or other object being used or carried by the solicitor, to any part of the street corner, street intersection, or highway interchange.

SECTION 4: Manner of Panhandling. It shall be unlawful for any person to panhandle in any of the following manners:

- a) By coming within three feet of the person solicited, until that person has indicated that he does wish to make a donation;
- b) By blocking the path of the person solicited along a sidewalk or street;
- c) By following a person who walks away from the panhandler;
- d) By using profane or abusive language, either during the solicitation or following a refusal;
- e) By panhandling in a group of two or more persons; or
- f) By any statement, gesture, or other communication which a reasonable person in the situation of the person solicited would perceive to be a threat.

SECTION 5: False or misleading solicitation.

a) It shall be unlawful for any person to knowingly make any false or misleading representation in the course of soliciting a donation. False or misleading representations include, but are not limited to, the following:

- 1) Stating that the donation is needed to meet a specific need, when the solicitor already has sufficient funds to meet that need and does not disclose that fact;
- 2) Stating that the donation is needed to meet a need which does not exist;
- 3) Stating that the solicitor is from out of town and stranded, when that is not true;
- 4) Wearing a military uniform or other indication of military service, when the solicitor is neither a present nor former member of the service indicated;
- 5) Wearing or displaying an indication of physical disability, when the solicitor does not suffer the disability indicated;

- 6) Use of any makeup or device to simulate any deformity; or
- 7) Stating that the solicitor is homeless, when he or she is not.

b) It shall be unlawful for any person to solicit a donation stating that the funds are needed for a specific purpose and then spends the funds received for a different purpose.

c) This section establishes a single offense. Evidence which establishes beyond a reasonable doubt that the defendant violated the section is sufficient for conviction and need not establish which subdivision was violated.

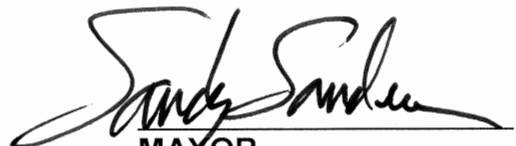
SECTION 6: Section 13-253 of the Fort Smith Municipal Code is hereby repealed in its entirety.

SECTION 7: Any person convicted of violating any provision of this Ordinance shall be deemed guilty of a misdemeanor and subject to penalty as set forth in Section 1-9 of the Fort Smith Code of Ordinances.


SECTION 8: Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

THIS ORDINANCE ADOPTED this 21st day of February, 2017.

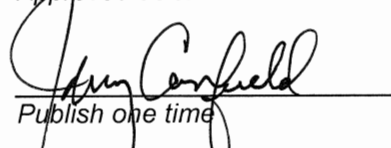
APPROVED:


MAYOR

ATTEST:


CITY CLERK

Approved as to form:


Publish one time